IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.48 OF 2007
WITH
CIVIL APPLICATION NO.76 OF 2007

Mr.Anupam Gopal Mittal. ..Appellant.

V/s.

Mrs.Mehroo S. Bali. ..Respondent.

Mr.Shrihari Aney, Sr.Advocate with Bharat Chowdhary i/b. Lekh Legal for appellant.

Mr.Y.S.Jahagirdar with P.S.Dani & Manek Kalyaniwalle i/b. Mulla & Mula Co.for Respondent.

CORAM: A.M.KHANWILKAR,J

DATE : FEBRUARY 2, 2007.

P.C. :

1. Heard counsel for the parties.

2. I am in agreement with the conclusion reached by the Court below that there was no prima facie case in favour of the plaintiff to grant interim relief, as prayed. Counsel for the appellant would however, argue that the trial Court has misdirected itself in not considering the agreement dated 22nd May, 1999. In terms of that agreement, it was agreed between the parties that on account of partition of the said property between the parties in First part and second part, passage, open compound and main entrance in

front and in the rear in the entire property mentioned in the Schedule A referred to in agreement shall be used commonly by both the parties. Counsel for the appellant however, candidly accepts that the conveyance deed entered on 27th February, 2003 does not reiterate this position. The argument however, is that the agreement dated 22nd May, 1999 should be read into conveyance deed executed between the parties dated 27th February, 2003. This argument does not commend to me. The trial Court has rightly found that what is binding on the parties is the conveyance deed, as it is culmination of the agreements and understanding between the parties.

3. Besides, the agreement dated 22nd May, 1999 or for that matter the conveyance deed dated 27th February, 2003 has used any expression "right to the appellant to use passage in the front portion of the plot and more particularly on the front side of the building facing Dr.Annie Besant Road". Thus understood, the argument of right of easement cannot be taken to the extent that the appellant would enjoy the open passage for parking of vehicle disregarding the rights of the occupants of the building facing Dr. Annie Besant Road. I am in agreement with the argument canvassed on behalf of the respondent that

the main concern of the appellant for instituting the suit can be discerned from averment in paragraph-6 of the plaint. It is only when the ground floor tenant by name Hindustan Photo Films vacated and handed over the premises occupied by them in the front portion of the building owned by the defendant, the appellant filed suit, so as to assert right in respect of the open space in the front portion of the building for parking. There is no averment in the plaint that the appellant was also enjoying that open space occupied by the said Hindustan Photo Films. What is relevant to note is that even during the course of argument the respondent/defendant had agreed to allow the appellants to park cars in common passage, which is on the side entrance of the building. However, the appellant would assert that he has right to park his vehicles even on the front side of the building, which claim is unsubstantiated either from agreement dated 22nd May 1999 or the conveyance deed dated 27th February, 2003. I see no substance in this appeal.

3. Counsel for the appellant would then contend that the Court even while dismissing the Notice of Motion has observed that the matter involves short question, for which suit has been expedited. It was argued that if the suit has been expedited, the

parties be directed to maintain status quo as of now till the disposal of the suit. This submission does not commend to me. If the appellant has failed to establish right in respect of the parking space claimed by the appellant, the question of continuing that arrangement merely because the suit has been expedited by the trial Court does not arise.

4. Accordingly, the appeal as well as civil application are dismissed.

5. At this stage, the counsel for the appellant submits that the arrangement as of now be maintained by the parties to enable the appellant to take up the matter in appeal. I see no reason to show this indulgence. Hence, this request is rejected.